IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

Crl.Rev.Pet.No. 2780 of 2007()

CRRP.8/2007 of I ADDL.SESSIONS COURT, ERNAKULAM
CC.136/2003 of JUDL.MAGISTRATE OF FIRST CLASS-I, ERNAKULAM

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REVN. PETITIONER: 1ST RESPONDENT/ACCUSED

BALAGOPALA PRABHU,
S/O ANANTHA PRABHU, KOLLAPPURA KOVILAKAM,
OPP. RAJAGOPALA SWAMI TEMPLE, KODUNGALLUR.

BY ADV. SRI.LIJU. M.P
SRI.G.PADMARAJ

RESPONDENTS: APPELLANT/COMPLAINANT

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1. REMA.G.SHENOI,
'NAYANA', 41/1539,
KACHERIPPADY, KOCHI.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR
SRI.SHAJI P.CHALY

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 14/09/2007 ALONG WITH CRRP 2779/07, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl. R.P. No. 2779 of 2007
and 2780 of 2007

.....

Dated, this the 14th day of July 2007

O R D E R

The common revision petitioner is the accused in C.C. 136 of 2003 on the file of the J.F.C.M-I, Ernakulam which was a prosecution under Sec. 138 of of the Negotiable Instruments Act, 1881 involving a cheque for Rs. 3,50,000/-.

2. I heard the learned counsel for the petitioner and the learned counsel for the respondent/complainant.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the appellant in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary

evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. The trial court sentenced the revision petitioner fo simple imprisonment till rising of the court and directed to pay a sum of Rs. 3,60,000/- under Section 357 (3) Cr.P.c. Aggrieved by the conviction and sentence the revision petitioner preferred Crl.Appeal 957 of 2006 before the Sessions Court,Ernakulam. The complainant had preferred Crl. R.P. 8 of 2007 before the I Addl.Sessions Court, Ernakulam seeking enhanvement of compensation. The appeal as well as the revision were disposed of by the first Addl. District court, Ernakulam and as per common order dated 30-4-2007 the lower appellate court dismissed the appeal but allowed the revision enhacing the compensation to Rs. 4 lakhs. These ordered as assailed in these revisions.

5. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence imposed on the revision petitioner. Accordingly, if the revision petitioner pays to the first respondent complainant by way of compensation under Sec. 357 (3) Cr.P.C. a sum of Rs.3,70,000/- (Rupees Three lakh seventy thousand only) within six **months** from today, then he need to undergo only imprisonment till the rising of the court. If the revision petitioner commits default in making the payment as aforesaid, the sentence, imposed on him by the trial court shall revive.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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